

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
Clerk's Office
USDC, Mass.
Date 12-13-04
By Deputy Clerk

JUDITH RÉ,

Plaintiff,

v.

JODI R.R. SMITH, and
BARNES & NOBLE INC.

Defendants.

Civil No. 04-11385-RGS

AFFIDAVIT OF CAROLE LALLI

I, CAROLE LALLI, state the following on my own personal knowledge:

1. I am familiar with Judith Ré and her SOCIAL SAVVY® brand of etiquette instruction. In 1991, when I was a senior editor at Simon & Schuster I worked with Ms. Ré to publish her book, SOCIAL SAVVY: A Teenager's Guide to Feeling Confident In Any Situation.

2. For approximately nine years I was a senior editor at Simon & Schuster. In this capacity, I developed books for publishing.

3. Around 1992 I left Simon & Schuster to become the editor-in-chief of *Food & Wine* magazine. I remained editor-in-chief at *Food & Wine* magazine for approximately 3 years until I left the magazine to join Rizzoli International Publications as a senior editor. At Rizzoli I also acquired and developed books for publishing. I stayed at Rizzoli for about 3 years until I left to write my own books. I am now the author of three cookbooks and numerous articles.

4. In 1991, Ms. Ré, through her literary agent, came to me with a proposal to publish a book for teenagers that encompassed Ms. Ré's brand of etiquette consulting, which she called SOCIAL SAVVY®. I found her idea to be particularly compelling and agreed to present her

book for publication by Simon & Schuster. In particular, I found that her etiquette consulting concept was unique and she had a clear command of the material as an expert in her field. Moreover, I was impressed that Ms. Ré had the institutional backing of the Ritz-Carlton hotel. In addition, Ms. Ré's SOCIAL SAVVY® etiquette work had national media exposure, which made her appealing as an author.

5. Based on my recommendation, Simon & Schuster decided to publish Ms. Ré's book SOCIAL SAVVY. Our normal course when publishing books at both Simon & Schuster and Rizzoli, was to look into whether the proposed title was identical or similar to any other books on the market. We would run these searches in order to avoid printing a book with a title that was identical or similar to another book on the market. I sought to avoid printing a book with an identical or similar title in order to avoid any type of confusion about the association of my book and the other book— including a negative association if the book was not very good. In addition, the publishing community is a relatively close-knit professional community and we sought to avoid upsetting other publishers by printing a book with a similar or identical title. On several occasions I can recall changing the working title of a book because it was identical or similar to another book on the market. Although I cannot specifically recall now, based on my usual practice, I conclude that no other book on the market — etiquette or otherwise — used the term Social Savvy in the title.


6. At Simon & Schuster and Rizzoli it was also part of our normal course to look into any possible trademark infringement issues. With Ms. Ré's book we did not look into trademark issues because she had already obtained a trademark on the term SOCIAL SAVVY®. Often times, however, we would scan the records of the United States Patent & Trademark Office to ensure no trademark issues would arise with a potential title. At Simon & Schuster and

Rizzoli we sought to avoid trademark infringement issues by pro-actively spotting potential conflicts.

7. I understand that once we agreed to publish Ms. Ré's book, Simon & Schuster agreed to pay Ms. Ré an advance of \$35,000. This was a relatively large advance for an etiquette book by a first-time author at the time and reflected the factors described in paragraph 4 above. We were confident that the book would find an audience and sell well.

8. I also understand that Simon & Schuster printed Ms. Ré's book 11 times over the course of 13 years. Such an extensive number of printings indicates that the book was indeed successful as it continued to sell out its printings. In publishing terms, it had succeeded, beyond its initial season, as a backlist title.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 13th DAY OF
December, 2004.



Carole Lalli